TABLE OF CONTENTS

TABLE OF CONTENTS 1

1AC 2

\*\*FRONTLINES\*\* 12

AT-RETALIATION 13

AT-STRAUS MUTUALITY 14

SELF-DEFENSE ADD-ON 15

1AC

I affirm. Actions are permissible until proven otherwise since we take millions of actions in our everyday lives that need not be subject to moral scruples e.g. drinking water or going to school. **Kagan** clarifies moral permissibility:[[1]](#footnote-1)

For a given reaction is morally required if and only if it is supported by a morally decisive reason. Along similar lines, we can say that a given reaction is morally forbidden if and only if there is a morally decisive reason for not reacting in that way. Furthermore, if we make the plausible assumption that **an action is permitted provided that it is not forbidden, [so]** we can say that **a given action is morally permitted**if and only **if there is no morally decisive reason for not reacting in the given way.** Note that on this account what makes a reaction permitted is the absence of a certain kind of reason – i.e., the absence of a morally decisive reason for not reacting in this way. Thus, **a reaction’s being permitted does not entail that there is any**sort of**reason at all which supports reacting in that** way. It is not **the presence of a “morally adequate” reason which grounds permission; rather, it is the absence of a reason sufficient to ground a prohibition**.

Therefore, the neg has the positive burden of proving the res impermissible since absent a reason against the use of deadly force, the res would be permissible. This also means that skep affirms because if morality doesn’t exist it’s impossible for an action to be defeated by any moral considerations, rendering all actions permissible.

Next, **Edwards** contextualizes domestic violence:[[2]](#footnote-2)

As a survivor of domestic violence, I have often been disturbed at the popular beliefs and misconceptions surrounding the experience of abuse. Leaving aside stereotypes for the moment, I want to focus on the phenomenon of “mutual domestic violence”. I have heard this term [has been] used to describe physical fights between couples, a term which insinuates that both combatants are on equal ground and equally to blame. However, “fighting” is not the same as domestic violence. Domestic violence can, but doesn’t necessarily have to include physical violence. What differentiates domestic violence, or abuse, from fighting is that domestic violence involves an ongoing pattern of attempts by one person to control and dominate the other person. “Mutual domestic violence” does not exist. The word “mutual” implies equality and a sense that the two parties are on common ground. In the case of domestic violence, there is no “mutuality”. Through beatings, sexual abuse, and emotional/verbal abuse, one person exercises control over another person and maintains it through force, credible threat of force, or tactics such as isolating them from family/friends, monitoring their private correspondence or movements, or preventing them from access to money or material resources. There is nothing “two-sided” about it. Abuse, or domestic violence, is characterized by a context of coercive control and a variety of tactics designed to weaken, confuse, hurt, and frighten the victim. These tactics may or may not involve physical violence. The violence can be sexual, mental, emotional, verbal, or psychological. Often, the physical violence doesn’t come until the cycle of abuse is firmly entrenched in the relationship. All kinds of abuse, whether or not they leave bruises, are harmful to sufferers and a violation of their rights and boundaries. Abuse is used to control a victim and convince her that nothing bad is happening or that she is the one who caused the violence. Over time, she can cease to trust her own perceptions and be reluctant or afraid to reach out for help. She may think that no one would believe her, fear she would lose custody of her children, or believe that her partner would prevent her from escaping or retaliate in some way. This is not a relationship of mutuality or equality. They are equal as human beings; however one person is resorting to vicious, manipulative tactics to disorient and dominate his victim and using force or threat of force against her if she challenges him. Calling every instance in which a couple resorts to physical fighting as “domestic violence” detracts from the brutal realities of abuse and the impact that it has on a victim both during the relationship and in the aftermath. If the term “domestic violence” is used to describe everything ranging from a one-time shoving match to a long-term ongoing cycle of beatings and control tactics, it loses its meaning. It is important to differentiate an abusive relationship where a variety of tactics are used by one person to control, manipulate, and hurt another from a physically combative relational style. A relationship can involve physical fighting but not necessarily be abusive because of the lack of coercion and control. One person isn’t using physical violence and coercive tactics to control the other person’s life and interactions. A couple may physically fight every now and then but for the most part have a relationship of mutuality and equality where one isn’t exerting and enforcing control over the other. In the case of domestic violence, the establishment and enforcement of control is constant, omnipresent, and all-encompassing. There is never a moment in which this dynamic does not exist. Certainly there can be times of calm and even happiness, but those times all too quickly give way to tension building phases and then explosions, often for no reason at all. But even in the times of apparent peace and tranquility, the abuser’s desire for control and dominance is still simmering beneath the surface. Eventually it will explode, often for no apparent reason at all. The woman may not even see it coming until it is too late. The lived experience of domestic violence confers an invisibility upon the victim. She is isolated from others and becomes increasingly alienated from herself, unable to trust her own perceptions, and having no one who can give her a desperately needed outside perspective and validation. She is even more invisible if her injuries do not show or if she is forced to pretend that everything is fine. She is invisible to her abuser as a human being, a person deserving of bodily integrity, respect, and dignity. When her experience is trivialized as “mutual” and referred to as “fighting”, she is further diminished. Deep down she knows what she is enduring is more than just “fighting”. A punch or two hurts a lot less than living in a situation where one is under constant surveillance, forbidden to see family and friends, denied access to money or other necessities of life, subjected to insults, public humiliation, and accusations, and living with the constant threat of harm to self or children. Domestic violence is a reality where the rules are everchanging and the retaliations are unpredictable. It is degrading, painful, traumatizing, disorienting, frightening, lonely, and dehumanizing. In this reality, there are no equals. There is no mutuality.

And, accept reasonable aff interps since I need interpretive leeway to offset neg time skew and neg ability to adapt to the AC. Presume aff since I had to overcome structural skews.

I value Morality. Without a permissible choice, morality would lose its normative force. Subjects who are powerless to meet the demands of morality simply choose whatever they want, as they are wrong either way. If morality can’t permit actions, it cannot prohibit them either because it lacks the normative force to condemn actions.

Next, all moral theories presume the worth of persons as grounds for demanding that we treat them in some ways and not others. Any adequate moral theory must recognize that humans have inherent value, because that value is the reason for acting in the first place. Moral theories differ on how to best respect personal worth, but all moral theories recognize that humans have value worthy of respect. Therefore, a proper account of personhood is a meta-constraint on all ethical theories.

The standard is respecting the right to self-defense.

First, no agent would accept a morality that precluded the possibility for individuals to defend themselves. Since any person could be violated at any time, moral agents must reserve the right to defend themselves as a means of securing their own freedom. Lacking this motivation to adopt a moral theory, then morality would cease to guide action, as there would be no reason for individuals to follow a system of ethics in the first place.

Second, self-defense is necessary to protect the inherent worth of persons. Without the right to self-defense, individuals’ lives would be meaningless, since they could do nothing to defend themselves in the face of aggression. In order to prescribe value to persons, morality must allow humans to defend their own personhood. Otherwise, morality would be self-defeating since it would claim value on behalf of persons without giving them the right to protect that value.

Third, self-defense is justified since the aggressor forfeits his rights to the victim. Since morality is a system that governs social interaction, it assumes that individuals exist inter-subjectively and so must regulate their conduct in accordance with one another. Thus morality is a system of social responsibilities. When an individual attempts to violate the rights of another within that moral community, he shirks his responsibility to respect the rights of the individual in question and so forfeits his own moral rights. Thus, it is morally permissible for victims to defend themselves with deadly force because the abuser has sacrificed his moral claim to object. This also takes out constraints on self-defense like proportionality and necessity because the point of constraints is to be sure that the abuser’s rights are not unnecessarily abused, but since the abuser has lost his rights, there’s no need to protect him.

Fourth, when a victim’s life is threatened, morality requires a choice between the life of the victim and that of the aggressor. If morality couldn’t choose one life over the other, then it would cease to guide action, as there would be no way for individuals to choose a moral action in difficult moral dilemmas. However, the only distinction between the two lives is that the aggressor caused the situation in the first place. If causal responsibility wasn’t morally relevant, then morality would lose its normative force, since it could arbitrarily punish individuals for crimes they didn’t commit, failing to motivate those who did break the rules to abide by them in the future. Thus, the victim can prefer their life to the life of the aggressor and kill in self-defense, since the aggressor caused the situation.

I contend that victims have to kill to live; as such, their killing constitutes self-defense.

Domestic violence causes massive death, sexual abuse, and suffering. NCADV:[[3]](#footnote-3)

Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior perpetrated by an intimate partner against another. It is an epidemic affecting individuals in every community, regardless of age, economic status, race, religion, nationality or educational background. Violence against women [It] is often accompanied by emotionally abusive and controlling behavior, and thus is part of a systematic pattern of dominance and control. Domestic violence [It] results in physical injury, psychological trauma, and sometimes death. The consequences of domestic violence can cross generations and truly last a lifetime. One in every four women will experience domestic violence in her lifetime. 1 An estimated 1.3 million women are victims of physical assault by an intimate partner each year. 2 85% of domestic violence victims are women. 3 Historically, females have been most often victimized by someone they knew. 4 Females who are 20-24 years of age are at the greatest risk of nonfatal intimate partner violence. 5 Most cases of domestic violence are never reported to the police. 6 Witnessing violence between one’s parents or caretakers is the strongest risk factor of transmitting violent behavior from one generation to the next. 7 Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults. 8 30% to 60% of perpetrators of intimate partner violence also abuse children in the household. 9 One in 6 women and 1 in 33 men have experienced an attempted or completed rape. 10 Nearly 7.8 million women have been raped by an intimate partner at some point in their lives. 11 Sexual assault or forced sex occurs in approximately 40-45% of battering relationships. 12 1 in 12 women and 1 in 45 men have been stalked in their lifetime. 13 81% of women stalked by a current or former intimate partner are also physically assaulted by that partner; 31% are also sexually assaulted by that partner. 13 Almost one-third of female homicide victims that are reported in police records are killed by an intimate partner. 14 In 70-80% of intimate partner homicides, no matter which partner was killed, the man physically abused the woman before the murder. 12 Less than one-fifth of victims reporting an injury from intimate partner violence sought medical treatment following the injury. 15 Intimate partner violence results in more than 18.5 million mental health care visits each year. 16 The cost of intimate partner violence exceeds $5.8 billion each year, $4.1 billion of which is for direct medical and mental health services. 17 Victims of intimate partner violence lost almost 8 million days of paid work because of the violence perpetrated against them by current or former husbands, boyfriends and dates. This loss is the equivalent of more than 32,000 full-time jobs and almost 5.6 million days of household productivity as a result of violence. 17 There are 16,800 homicides and $2.2 million (medically treated) injuries due to intimate partner violence annually, which costs $37 billion. 18 Domestic violence is one of the most chronically underreported crimes. 20 Only approximately one-quarter of all physical assaults, one-fifth of all rapes, and one-half of all stalkings perpetuated against females by intimate partners are reported to the police. 1 Approximately 20% of the 1.5 million people who experience intimate partner violence annually obtain civil protection orders. 1 Approximately one-half of the orders obtained by women against intimate partners who physically assaulted them were violated. 1 More than two-thirds of the restraining orders against intimate partners who raped or stalked the victim were violated.

This also means deadly force is proportional because victims who stay in the abusive relationship run the risk of being killed. Even if the abuser hasn’t yet killed the victim, proportionality doesn’t mean reciprocity. Proportional means “corresponding in size or amount to something else.”[[4]](#footnote-4) Thus, the aff is proportional because deadly force corresponds to the gravity of the threat imposed by domestic violence. Moreover, any requirement of proportionality would be self-defeating since proportionality is evaluated after the fact, but the victim’s life is constantly at risk. Any constraint of proportionality would force victims to let them selves be killed before they could defend themselves, failing to respect the right to self-defense.

Next, in cases of repeated domestic violence, victims have no other options and are forced to kill. **West’s Encyclopedia of American Law**:[[5]](#footnote-5)

Those who have studied domestic violence believe that it usually occurs in a cycle with three general stages. First, the abuser uses words or threats, perhaps [and] humiliation or ridicule. Next, the abuser explodes at some perceived infraction by the other person, and the abuser's rage is manifested in physical violence. Finally, the abuser "cools off," asks forgiveness, and promises that the violence will never occur again. At that point, the victim often abandons any attempt to leave the situation or to have charges brought against the abuser, although some prosecutors will go forward with charges even if the victim is unwilling to do so. Typically, [Then] the abuser's rage begins to build again after the reconciliation, and the violent cycle is repeated. In some cases of repeated domestic violence, the victim[s] eventually strikes back and harms or kills the abuser. People who are repeatedly victimized by spouses or other partners often suffer from low self-esteem, feelings of shame and guilt, and a sense that they are trapped in a situation from which there is no escape. Some who [They] feel that they have no outside protection from their batterer [and] may turn to self-protection.

This is empirically verified. **Miller**:[[6]](#footnote-6)

Although there is a dearth of research about typologies characterizing women who use violence in intimate relationships, the studies that explore women’s use of force generally agree that most women are victims who engage in self-defensive actions (Hamberger & Guse, 2002; S. L. Miller, 2001; Saunders, 2002). For instance, in their Wisconsin study of women arrested for domestic violence and court mandated for treatment, Hamberger and Potente (1994) found that most of the women were victims of battering who used self-defense or retaliatory violence. Likewise, a 1986 study by Saunders (1986) found that 71% of women who were battered and arrested used self defensive violence. In other words, women’s use of violence within relationships is typically part and parcel of their ongoing victimization, using force to either stop or escape violence (Barnett, Lee, & Thelan, 1997; Browne, 1997; Dasgupta, 1999, 2002; R. E. Dobash & Dobash, 1979, 1992; Feld & Straus, 1989; Hamberger, 1997; Hamberger, Lohr, & Bonge, 1994; Hamberger, Lohr, Bonge, & Tolin, 1997; Hamberger & Potente, 1994; Johnson & Ferraro, 2000; S. L. Miller, 2001; Saunders, 1986, 1988, 2002; Vivian & Langhinrichsen-Rohling, 1996).

Prefer the victim’s perception of the situation to objective external criteria because it would be nonsensical to force the victim to wait until they are objectively in danger. **Botterell**:[[7]](#footnote-7)

Among the things that follow from the idea of reasonableness as equality is that risk cannot be reasonably allocated where one party unilaterally and indifferently sets the terms of the interaction with another. 57 The idea that individuals may not unilaterally and indifferently set the terms of their interactions with others makes problems for the deeds theory. For if the deeds theory of justification is adopted, a person is justified in defending herself only if an attack is in fact occurring. But this means that the aggressor is unilaterally and indifferently setting the terms of the interaction, and unilaterally and indifferently imposing risks on another person, because it is up to the aggressor to decide whether an attack is, after all, going to occur. With this in mind, it seems unfair to insist that the potential victim must wait until an attack is in fact occurring before she can take steps to defend herself.

This is also consistent with self-defense doctrine. Ewing:[[8]](#footnote-8)

At first glance, this proposed doctrine of psychological self-defense may seem like a radical departure from existing criminal law. In fact, however, such a doctrine is not only in keeping with the basic principles of criminal law, but is also not without precedent in current law justifying the use of deadly force. The criminal law operates on the assumption of free will— that normal people choose to behave the way they do and, thus, are both personally and criminally responsible for their unlawful actions. In some instances, however, the criminal law recognizes that the choices made by normal individuals are not fully the product of free will and thus should not subject them to criminal responsibility. Perhaps one of the clearest examples is current self defense law, which justifies the use of deadly force against an adversary not because the user of that force had no choice but to kill but because he or she has made “the kind of choice that other people would make under the same circumstances.” Like the person who kills in traditional self-defense, the battered woman who kills her batterer in psychological self-defense “chooses” to do so. For the most part, however, her “choice” is dictated by external and internal forces beyond her conscious control. Faced with the extremely limited options of killing herself, killing the batterer, or resigning herself to a fate sometimes not much better than physical death, the battered woman has little in the way of true choice. To the extent that she “chooses” to kill her batterer, her “choice” is basically the “choice that other people would make under the same circumstances.”

Furthermore, the victim is the best judge of danger since only they experience the violence. Even if self-defense must be objective, the victim’s belief is the most objective way to evaluate it. **Krause**:[[9]](#footnote-9)

There is ample literature to suggest that a battered woman may in fact be accurate in predicting an imminent threat of such harm from a sleeping abuser. According to this literature, out of sheer instinctual self-preservation a battered woman must become highly sensitive to her abuser’s behavior, and must learn to read the cues of an impending attack. Moreover, it is not quite accurate to say that a sleeping abuser poses no threat. Unless actually comatose, a sleeping abuser is merely seconds away from being an awakened abuser—and research demonstrates that abusers (particularly when intoxicated) tend to sleep lightly, demand that their partners be present when they awaken, and resume the abuse immediately. 35 Is it truly unreasonable for a woman who has repeatedly experienced the violent aftermath of her abuser’s naps to believe that the next severe attack is about to begin? 36 The wholesale refusal even to entertain the idea that the battered woman’s assessment of the threat might be accurate is particularly striking in light of evidence that the average person is not very good at predicting violence. As Dressler notes elsewhere, research suggests that even trained mental health professionals are apt to over-predict the future dangerousness of offenders, and the rate of false positives for untrained laypersons could well be much higher. 37 But these statistics do not take into account the fact that the battered woman is not a disinterested observer trying to assess her partner’s predilection for violence in the abstract; she is simply trying, based on her own violent experiences, to predict whether or not she is in danger of serious injury. Although a full discussion of the social science evidence is beyond the scope of this Commentary, there may well be good reason to suspect that the battered woman’s ability to predict this particular danger is far better than that of the average person (or indeed the average juror). At the very least, it should be clear that an irrebuttable presumption that her belief is always wrong is no more defensible than a presumption that she is always correct. In short, an analysis that asks the right question—whether this particular battered woman had a reasonable belief that she faced the imminent use of force by her abuser, capable of causing her serious bodily harm—may well come to a different conclusion than Dressler assumes.

Also, to treat oneself as an end requires defending oneself from aggression. Being an end allows us to dispose of our contingent ends like our occupations or hobbies, but not of our person. Thus, being an end permits one to protect oneself against aggressors. The justification is not to save my own life, but to resist the misuse of my life as the life of a rational agent. Generic deontological arguments against killing apply only to maxims of convenience killing, in which we kill for the intent of achieving some self-interested end. Because the intent of deadly force in response to repeated domestic violence is to protect oneself, arguments about victims using aggressors as mere means do not apply.

Additionally, leaving increases the abuse—this renders any imminence requirement self-defeating. **Koons**:[[10]](#footnote-10)

Battering, as experienced by many women, is distorted when read through doctrines such as imminence. In the context of the killing of a battering man by a woman, imminence is a confused doctrine. While it purports to be based simply on the passage of time, imminence actually reflects subjective social norms, such as that a woman who lives with a battering man "should have left" the room, the house, or the relationship. Infused with suppositions about gender roles and behavior, imminence often functions as a retreat rule to enforce unspoken societal assumptions that women should leave battering relationships before episodes of violence take place. Yet, requiring retreat, in whatever form, exposes women to greater danger of abuse. The unworkability of a retreat rule is manifest when considering the phenomenon of separation assault. Legal scholars have defined separation assault as "the attack on the woman's body and volition in which her partner keeps her from leaving, retaliates for the separation, or forces her to return." The concept of separation assault recognizes that patterns of violence, already dramatic, often increase upon a woman's separation from a battering man. According to the Department of Justice, seventy-five percent of assaults occur when the abused party is divorced or separated from the abuser. Another study indicates that forty-five percent of murders of women arise out of a man's "rage over the actual or impending estrangement from his partner." Women who are separated from their spouses are three times more likely to be attacked than divorced women and twenty-five times more likely to be attacked than married women.

Next, the state has failed. Police and law enforcement fail to respond 90 percent of the time. **Wimberly**:[[11]](#footnote-11)

Empirical, historical, and sociological evidence should be used by experts to show that the necessity of a battered woman’s actions in self-defense is in large part created by societal pressures that demand that women stay in the home, and submit to the domination of men. For instance, an expert could demonstrate how the assumptions of the law and subsequently of law enforcement officials reflect the social norms that compel women to silently and privately cope with domestic abuse. As Caroline Forell and Donna Matthews wrote, “[T]he law is often ineffectual. For example, in a [1994] U.S. Department of Justice study, Marianne Zawitz estimated that nearly **90 percent of women killed by intimates had previously called the police, and** that **half of these had called five or more times.”** 78 Professor Raeder similarly found, “The statistics produced from myriad sources are disconcerting, even with some discounting for methodological objections. Each year nearly 1500 women are killed by their batterers. Approximately ninety percent of women killed by husbands or boyfriends were stalked and had previously called the police.” 79 **Women** who have been **victimized by their intimate partners** may **have tried, and failed, to get help from the police.** According to Gillespie, “Many women who have ultimately killed violent mates tell of their inability to get police protection.” 80 She continues: If she is like the overwhelming majority of battered women, she also knows, firsthand, that she cannot rely on the police, the courts, neighbors, relatives, or anyone else for protection against her violent mate. Every attempt to get help is likely only to reinforce her perception that she has no alternative but to protect herself. 81 This “don’t ask, don’t tell” mentality demonstrates a societal preference for **idealized notions of the family** over protection of the woman. This preference **prevent**s **women from seeking protection from** the very **public agencies** that were created to help victims of abuse. As Julie Blackman explains, “[P]rotective agencies and interventionist policies more generally must ‘swim upstream’ against the flow of attitudes that give biological parents and marital bonds far more credit than they deserve.” 82

Even if victims get to the legal system, they are unable to get help at every level. **Meyersfeld**:[[12]](#footnote-12)

Many domestic legal systems are notoriously unable to protect women from private torture. 37 In some countries, the official structures are conducive to or supportive of violence as a means of subduing female family members. 38 In almost all countries, at each stage of the legal process women encounter impediments to their call for protection. 39 This alienates victims of private torture from the law, and the law from such victims. 40 The police or court clerks are usually a victim’s first point of contact with authority. 41 Predominantly, the gender of the officials and their treatment of female victims of violence constitute a disincentive to pursue a complaint. 42 The police often fail to respond to domestic violence calls 43 and court clerks or lower level administrative personnel are repeatedly reported as aggressive, accusatory, disinterested, and/or hostile. 44 In many instances, “[a]bused women frequently survive their situation by avoiding adversarial encounters and by actively shunning legal assistance.” 45 If a case does proceed to court, the relevant actors may “reinforc[e] the power of . . . [the] batter[er] . . . thus furthering women’s entrapment.” 46 By distinguishing between public and private violence—the latter predominantly viewed as a “‘lovers’ quarrel’” 47 — judicial officers minimize the harm, relegating it to a non-justiciable status. 48 Finally, government funding for domestic violence projects is usually insufficient or the first to be reduced in economic decline. 49

Moreover, imminence means we must evaluate the totality of the circumstances surrounding the killing. Moriarty:[[13]](#footnote-13)

We would think it foolhardy if the U.S. Department of Defense evaluated the threat of a terrorist attack on any given day in 2005 based only on the immediate circumstances of that given day, much less hour or minute. Rather, there is a lucid understanding in the international terrorism context that the determination of legitimate self-defense must be made through a rational evaluation of the totality of the circumstances, which may include a more elastic consideration of the time period to judge the threat. Similarly, in the domestic violence context, we should not separate the moment of killing from context and past behavior to determine whether the threat was “imminent” or “immediate” and whether the use of force was appropriate.

Also, constraints on self-defense are irrelevant in the domestic violence context. **Saunders**:[[14]](#footnote-14)

A widely used text defines self-defense as follows: “One who is not the aggressor in an encounter is justified in using a reasonable amount of force against his adversary when he reasonably believes a) that he is in immediate danger of unlawful bodily harm from his adversary and b) that the use of such force is necessary to avoid this danger” (Lafave & Scott, 1972, p.391). Women’s size and social conditioning have come to be recognized as important factors for juries to consider in determining self-defense. In rejecting the traditional jury instructions in the appeal of the Wanrow murder case, the court stated: In our society **women suffer from a** conspicuous **lack of** access to training in, and means of developing, those **skills necessary to effectively repel a male assailant without resorting to the use of a deadly weapon**…. The respondent was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation’s “long and unfortunate history of sex discrimination”…. (The challenged instructions) leaves the jury with the impression that **the objective standard** to be applied **is** that **applicable to an altercation between two men. The impression** created—**that a 5’5’’ woman** with a cast on her leg and using a crutch **must**, under the law, somehow **repel an assault by a 6’2’’** intoxicated **man without employing weapons in her defense…violates the respondents’ right to equal protection under the law.** (State of Washington vs. Wanrow, p.559). **Therefore, battered women are justified in using enough force to stop an attack, which** in most cases **means using more severe violence than their attackers.**

Finally, victims who use deadly force meet any and all constraints of self-defense. **Maguigan**:[[15]](#footnote-15)

"Confrontation" is used here to describe a fact pattern that would entitle a defendant to a self-defense instruction under the law of most jurisdictions.34 A case is defined as a confrontational bat- tered woman's homicide35 if the defendant killed her spouse or lover and at trial evidence (disputed or not) was offered on the record and discussed on appeal (whether or not ruled admissible by the trial judge) that (1) he had abused her in the past,36 (2) on the occasion of the homicide he behaved in a way that, according to her testimony, she interpreted37 as posing an imminent38 threat of death or serious bodily iljury39 to her, (3) she did not provoke40 his behavior by unlawful actions and was not the initial aggressor,41 (4) she violated no duty to retreat,42 and (5) the force she used was proportional to the threat she perceived.43 A noncon- frontational case, on the other hand, is defined as a killing that occurred while either (1) the man was asleep, (2) the man was awake, but the woman was the initial aggressor on the particular occasion, or (3) the woman hired or persuaded someone else to kill the man. The search44 sought to identify all appeals from convictions in battered women's homicide cases in which a claim of self-defense had been raised at trial. Specifically, the search was aimed at appellate opinions45 issued in cases where (1) the defendant was a woman, (2) the defendant was accused of killing her spouse or lover,46 (3) there was evidence of a history of abuse47 of the woman by the man, (4) the defendant claimed to have acted in self- defense,48 and (5) the defendant was convicted. No attempt was made to decide whether in fact the defendant in each case acted in self-defense.49 The cases meeting the above requirements were put into the confrontation category only when the following factors existed: (1) the man was awake; (2) he behaved in a way that the woman interpreted50 as posing an imminent or immediate threat of death or serious injury to her; and (3) there was evidence that she did not provoke his behavior by unlawful conduct and was not the initial aggressor. A case was classified as confrontational if there was evidence (disputed or not) of record for each element of the definition.51 The same principle of selection was employed in the nonconfrontation category: if the facts of record established that the man was asleep at the time of the killing or that the woman had persuaded someone else to kill him, the case was classified as nonconfrontational. Similarly, if the record contained undisputed evidence52 that the defendant was the initial aggressor, the case was put in the nonconfrontation category, even if the killing occurred during an ongoing, face-to-face struggle.53 The focus of this study on appellate decisions raises the possibility of two types of distortion, neither of which poses a problem for criticizing the conclusions drawn by other scholars from the same sample, but each of which suggests the need for caution before extrapolating the conclusions from the sample to the entire universe of battered women's cases.54 First, the sample excludes cases that were resolved by guilty pleas.55 Second, it excludes cases in which the prosecution dismissed the charges before trial,56 as well as cases in which the defendants were acquitted after trial.57 It is hard to assess the degree of distortion in the confrontation/nonconfrontation breakdown resulting from the omission of guilty pleas due to the wide variety of factors that incline the prosecution and the defense to reach a non-trial disposition.58 The probable distortion from the exclusion of dismissals and acquittals, however, is easier to assess. These cases are likely to have included an over-representation of confrontation cases, while those leading to convictions are likely to have included an over-representation of nonconfrontation cases.59 The sample of appellate decisions, therefore, is likely to include a greater percentage of nonconfrontation cases than occurs in the total number of arrests. Two hundred twenty-three cases were identified as meeting the definition established for battered women's homicide cases.60 These cases generated a total of 270 opinions.61 The incidents, rather than the opinions, were used as the base for this portion of the Article's analysis.62 Of the 223 incidents comprising the base, 75% involve confrontations.63 Twenty percent are nonconfrontational cases (4% "con- tract killings,"64 8% sleeping-man cases, and 8% defendant as initial aggressor during a lull in the violence).65 In the remaining 5%, the appellate opinions did not include a discussion of the incident facts introduced at trial.66 As the breakdown indicates, the appellate opinions do not support the conclusion that most battered women kill during nonconfrontational situations. Current work by scholars in other disciplines is consistent with the conclusion that most battered women who kill do so during confrontations. It is estimated that each year in the United States approximately 500 women kill their spouses.67 Most female homicide defendants had been battered by the men whom they killed.68 Studies by sociologists, criminologists, and social psychol- ogists have shown that the vast majority of homicides by women of their partners occur during confrontations.69 These scholars often do not use the term "confrontation." Most describe cases involving ongoing attacks by the decedents as ones resulting from "victim precipitation," a term first used by Marvin Wolfgang to describe killings in which the victim was the first to use physical force against the slayer.70 "Victim precipitation" is a narrower category than the class of cases meeting the legal requirements for a self-defense instruction, since an event is only classified as victim precipitated if the decedent was first to use actual physical force. It is, however, also potentially a broader concept because the force directed at the defendant need not amount to a deadly attack by the victim.71 Even with this different definition the numbers of male-precipitated homicides by women partners are startling. One study of homicides by women against husbands in Detroit between 1982 and 1983 found that 71% of these cases were victim precipitated, in contrast to general homicide populations in which the victim-precipitation rate is between 22% and 37.9%.72 Another study, based on a six- city "random sample" survey of female homicide offenders, found that 83.7% of killings by women of their mates were the result of victim precipitation.73 Still another resulted in the finding that only 12% of all homicides by women were clearly nonconfrontational.74 Both the scholarship based on the national statistics compiled by the FBI and the studies based on more local samples conclude that most women who kill their partners do so in confrontational situations.

\*\*FRONTLINES\*\*

AT-RETALIATION

Retaliation doesn’t deny self-defense. **Saunders**:[[16]](#footnote-16)

Likewise, **self-defense pleas in homicide cases do not become nullified when extreme terror becomes mixed with extreme rage** (Schneider & Jordan, 1978). **It seems reasonable to expect victims of battery** or sexual abuse **who defend themselves from** lethal or nonlethal **attacks to combine anger with** their **fear.** Walker’s (1984) research on battered women’s emotional responses after being assaulted supports this expectation. **Thus, retaliation** (angrily trying to hurt the other) **while one is being attacked may be** almost **indistinguishable from self-defense** (cf. Pagelow, 1984).

AT-STRAUS MUTUALITY

Straus concedes violence against women is worse, disproving mutuality. **Straus**:[[17]](#footnote-17)

The only consistently supported gender difference in partner violence by men and women is that attacks by men cause more fear and injury, including more deaths. Although this may be the only consistently supported gender difference, it is an extremely important difference because it is one of several reasons for the need to continue to provide more services for female victims of partner violence than for male victims. It is also worthwhile to note that such differences are particularly apparent in studies of less common and more severe forms of violence.

SELF-DEFENSE ADD-ON

Literally every study with every control variable is consistent with the view that the majority of victims who use deadly force do so out of self-defense. Hagen:[[18]](#footnote-18)

Studies by Saunders (1986) and Hamberger and Potente (1994) suggest that the vast majority of women who use severe violence do so out of self-defense. Additional motivations for violence may be retaliation for previous violence or anticipation of imminent violence directed at them by their partners. Busey (1993b, cited in Healey, Smith, and O’Sullivan, 1998) categorizes women who engage in violence into subgroups: [A.] Self-defending victims engage in violence to defend themselves and escape from the violence directed toward them; they have histories of victimization and multiple injuries. This group appears to represent[s] the majority of women arrested for domestic violence. [B] Angry victims have a long history of being abused by partners and during childhood. They fight back to avoid being victims again. [C] Primary physical aggressors represent about 2 percent of the women arrested. These women initiate the violence and injure their male partners. [D] Mutually combatant women are in situations in which both partners inflict injuries. This group of women is estimated to represent about 2 percent of those arrested.

Prefer Hagen because it’s a synthesis of all the literature on victim motives and concludes self-defense represents the majority.

1. Shelly Kagan. The Limits of Morality. p.65-66 [↑](#footnote-ref-1)
2. Sarah Edwards. “There is no such thing as ‘mutual’ domestic violence.” The Examiner. 2009. [↑](#footnote-ref-2)
3. “Domestic Violence Facts.” National Coalition Against Domestic Violence. Every Home a Safe Home. NCADV Public Policy Office, Washington D.C. July 2007. [↑](#footnote-ref-3)
4. Princeton Word Net. “Proportional.” Adjective. [↑](#footnote-ref-4)
5. West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. [↑](#footnote-ref-5)
6. Susan L. Miller and Michelle L. Meloy. “Women’s Use of Force: Voices of Women Arrested for Domestic Violence.” 2006. Sage Publications. [↑](#footnote-ref-6)
7. Andrew Botterell. “Why We Ought to Be (Reasonable) Subjectivists About Justification.” Criminal Justice Ethics. Winter/Spring 2007. [↑](#footnote-ref-7)
8. Charles Patrick Ewing. Psychological Self-Defense: A Proposed Justification for Battered Women Who Kill. Law and Human Behavior, Vol. 14, No. 6, 1990. [↑](#footnote-ref-8)
9. Joan Krause [George Butler Research Professor of Law and Co-Director, Health Law & Policy Institute, University of Houston Law Center] Distorted Reflections of Battered Women Who Kill: A Response to Professor Dressler. OHIO STATE JOURNAL OF CRIMINAL LAW. [↑](#footnote-ref-9)
10. Koons, Judith E, Associate Professor of Law, Barry University School of Law, Orlando, Florida. “GUNSMOKE AND LEGAL MIRRORS: WOMEN SURVIVING INTIMATE BATTERY AND DEADLY LEGAL FORCE DOCTRINES.” Journal of Law and Policy 2006. [↑](#footnote-ref-10)
11. Mary Helen Wimberly. “Defending Victims of Domestic Violence Who Kill Their Batterers: Using the Trial Expert to Change Social Norms.” [↑](#footnote-ref-11)
12. Bonita C. Meyersfeld, “RECONCEPTUALIZING DOMESTIC VIOLENCE IN INTERNATIONAL LAW,” Albany Law Review, 4/11/04 [↑](#footnote-ref-12)
13. Jane Moriarty: [2005, 30 N.Y.U. Rev. L. & Soc. Change 1, 17194 words, ARTICLE: "WHILE DANGERS GATHER": THE BUSH PREEMPTION DOCTRINE, BATTERED WOMEN, IMMINENCE, AND ANTICIPATORY SELF-DEFENSE, Jane Campbell Moriarty\*] [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals Author(s): Holly Maguigan Reviewed work(s): Source: University of Pennsylvania Law Review, Vol. 140, No. 2 (Dec., 1991), pp. 379-486 Published by: The University of Pennsylvania Law Review Stable URL: http://www.jstor.org/stable/3312349 . Accessed: 21/12/2011 21:06 [↑](#footnote-ref-15)
16. “When Battered Women Use Violence: Husband Abuse or Self-defense.” Daniel G. Saunders. [↑](#footnote-ref-16)
17. Straus, Murray A. 2009. “Gender symmetry in partner violence: Evidence and implications for prevention and treatment.” Pp. 245-271 in *Preventing partner violence: Research and evidence-based intervention strategies*” vol. edited by D.J. Whitaker and J.R. Lutzker. Washington D.C. : American Psychological Association. [↑](#footnote-ref-17)
18. “Violence Against Women: Synthesis of Research for Advocacy Organizations.” Jan L. Hagen, Judy L. Postmus. September 2003. [↑](#footnote-ref-18)